Despite possible 362 violation
Recovery (after Sale) of auto: denied.

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

In the matter of:	
MARY L. JONES	**Adversary Proceeding**
(Chapter 13 Case 91-40101)	**Number 91-4025**
Debtor	
MARY L. JONES	
Plaintiff	
v.	
CHRYSLER CREDIT CORPORATION	
Defendant	

FILED
at 10 O'clock & 00 min AM
Date 7/12/91
MARY C. BARTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

MEMORANDUM AND ORDER

On April 17, 1991, a hearing was held upon a Complaint to Recover Property. Upon consideration of the evidence presented at trial, the briefs and other documentation presented by the parties, together with applicable authorities, I make

the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Defendant, Chrysler Credit Corporation, repossessed the Plaintiff's automobile on December 17, 1990.

On December 18, 1990, the Defendant mailed the Plaintiff a Notice of Sale indicating the vehicle would be offered for sale, unless earlier redeemed, on December 28, 1990.

The Notice of Sale was returned as undeliverable by the Post Office because the Post Office box had been closed with no forwarding address. Plaintiff alleges that the notice of sale was deficient. The contract between the parties provides that notice is sufficient if sent to Debtor's address shown on the contract. The notice was not sent to that address. Section B of the "Additional Terms and Conditions" set forth on the reverse side of the Retail Installment Contract executed by the parties provides in relevant part:

> . . . any notice to Buyer shall be sufficiently given if mailed to the address of Buyer set forth in this

contract.

The address of the Debtor/Buyer set forth on the face of the Retail Installment Contract is:

Mary F. Jones
Route 1, Box 387-D
Savannah, Georgia 31408

However, the notice was actually sent to:

Mary F. Jones
Post Office Box 5737
Savannah, Georgia 31414

The Defendant sold the Plaintiff's vehicle on January 15, 1991. The Plaintiff filed her Chapter 13 petition on January 15, 1991. The Clerk of the Bankruptcy Court mailed notices to creditors on January 16, 1991.

CONCLUSIONS OF LAW

11 U.S.C. Section 362(a)(6) prohibits

> any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title . . .

If a creditor violates the automatic stay without knowledge of the filing of the bankruptcy, it is merely a technical violation. Where the creditor violates the stay with knowledge of the bankruptcy, it is a willful violation. In re Locasico, 77 B.R. 932 (Bankr. S.D.Fla. 1987); In re Coons, 123 B.R. 649 (Bankr. N.D.Okl. 1991).

Chrysler Credit Corporation was not notified of the filing of the Plaintiff's Chapter 13 petition until after January 16, 1991, and therefore was without notice of the bankruptcy when the vehicle was sold at auction on January 15, 1991, the day of the filing, and thus did not willfully violate the automatic stay. Therefore, damages are inappropriate and this adversary proceeding shall be dismissed.

Moreover, the Plaintiff has suffered no loss inasmuch as the vehicle was sold for slightly more than the payoff, and the Plaintiff's equity of $6.09 has been paid to the Chapter 13 Trustee.

The Plaintiff's Chapter 13 petition indicates that her gross income

for 1990, during which she enjoyed the use of her automobile until its repossession on December 17, 1990, was $15,000.00. The budget filed with her Chapter 13 petition indicates she now has a net income of $2,000.00 per month, which would mean her gross income is now in excess of $30,000.00. Clearly, the 1987 Plymouth automobile is not necessary for her reorganization either.

The Debtor asserts that the Defendant failed to provide "reasonable notice" to the Debtor of the date and time of sale as required by O.C.G.A. Section 11-9-504. However, neither party has sufficiently addressed the issue of adequacy of notice as contemplated by the drafters of the Code. Had the notice been sent to the address set forth in the contract, it clearly would have been sufficient. However, the fact that the notice was sent to an address different than that set forth in the contract does not establish lack of reasonable notice. It simply means that Defendant has not made out a conclusive defense. Nevertheless, the Plaintiff has the burden of proof on all issues. Inasmuch as I have insufficient evidence upon which to decide that state law issue, I decline to do so.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law,

IT IS THE ORDER OF THIS COURT that this adversary proceeding be, and the same is, hereby dismissed.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia
This 9th day of July, 1991.